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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	No. 18-cr-0081-CRB
)	
STEVEN BROWN,)	
)	
Defendant.)	
)	San Francisco, California
		Wednesday, March 4, 2020

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: DAVID L. ANDERSON
UNITED STATES ATTORNEY
150 Almaden Boulevard, Suite 900
San Jose, California 95113
BY: CHINHAYI COLEMAN CADET
ASSISTANT UNITED STATES ATTORNEY

For Defendant: LAW OFFICES OF DOUGLAS RAPPAPORT
260 California Street, Suite 1002
San Francisco, California 94111
BY: DOUGLAS L. RAPPAPORT, ESQ.

Also Present: Joseph L. Schatz, Esq.
3121A Franklin Street
San Francisco, California 94123

Reported by: Katherine Powell Sullivan, CSR #5812, CRR, RMR
Official Reporter - U.S. District Court

1 Wednesday - March 4, 2020

1:49 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling Criminal 18-0081, USA versus
5 Steven Brown.6 **MS. CADET:** Good afternoon, Your Honor. Chinhayi
7 Cadet for the United States.8 **MR. RAPPAPORT:** Good afternoon, Your Honor. Douglas
9 Rappaport on behalf of Mr. Brown. He is present out custody.10 **MR. SCHATZ:** Good afternoon, Your Honor. Joseph
11 Schatz for Mr. Brown's victim, Terry Kleid.12 **THE COURT:** Okay. So where are we on this matter?13 **MR. SCHATZ:** Your Honor --14 **THE COURT:** You have to speak into the microphone.15 **MR. SCHATZ:** Your Honor, I sent the letter to the
16 Probation department, asking the Court to give my client the
17 opportunity to conduct discovery after the stay in the civil
18 action is lifted, because although the Court has afforded me
19 the opportunity to show why she should be afforded restitution,
20 I can't do that as long as the stay is in effect.21 I've asked the civil attorney for Mr. Brown to lift it.
22 He has refused, still, on grounds of his Fifth Amendment
23 rights.24 So I think that the fairest thing to do, since the Court
25 is affording me this opportunity but Mr. Brown himself is

01:50:28 preventing me from taking advantage of it, is to allow her to
2 come back to the Court within a reasonable time after the stay
3 has been lifted, to present the evidence that would show that
4 she's deserving of restitution.

5 **THE COURT:** Who has -- where is the stay at the
6 present time? What has been stayed?

7 **MR. RAPPAPORT:** My understanding is that Mr. Schatz
8 represents a woman by the name of Terry Kleid.

9 **THE COURT:** Right.

10 **MR. RAPPAPORT:** That he is alleging that she is a
11 victim of Mr. Brown's fraud in this particular case. Both the
12 Government and I, who have the ability to review the discovery,
13 do not believe that Ms. Kleid is a victim in this matter.

14 Mr. Schatz has said in a letter to this Court that he is
15 unable to ascertain whether she is a victim of Mr. Brown
16 because he has been unable to conduct discovery in the state
17 court proceeding.

18 Apparently, Mr. Schatz sued Mr. Brown as well as five
19 other defendants -- he can correct me; it may be four
20 defendants -- in state court. Mr. Brown, based on his Fifth
21 Amendment privilege, his attorneys sought a stay of the civil
22 proceeding but allowed the other defendants to proceed in the
23 case.

24 It's simply Mr. Brown who has a Fifth Amendment right.
25 And his right -- while I'm not his civil counsel, Mr. Brown's

01:51:41 Fifth Amendment right extends through the period through which
2 he could file a notice of appeal. I don't know if that has
3 run, and we're very close to that date.

4 Suffice to say that Mr. Schatz's letter did not provide
5 the whole entire picture to this Court and was, to a certain
6 degree, dishonest by omission.

7 We have a letter dated February 24th, 2020, that was
8 provided to this Court through the Government. It was
9 addressed to me. And it indicates that Mr. Schatz, indeed, has
10 had the opportunity to conduct discovery and, in fact, has
11 settled with the other defendants in the case.

12 Mr. Schatz also hired a forensic accountant to go through
13 the records which were provided to him by the individual who
14 purchased Mr. Brown's business. So Mr. Schatz does have those
15 records.

16 What this is, is really just a very clever attorney -- and
17 I have to take my hat off to him -- in an attempt to collect as
18 much as possible from Mr. Brown for his client. He has a civil
19 case pending, and he would like to basically take a second bite
20 at the apple here should he not prove successful in the civil
21 proceeding.

22 I would ask the Government here for their input as well.

23 **THE COURT:** Yes, Ms. Cadet.

24 **MS. CADET:** Your Honor, this particular defendant has
25 been adjudged guilty. He's been sentenced, and this is the

01:53:13

only issue remaining.

The Government and the defense agree that with respect to what was charged in this case, that Ms. Kleid is not a victim of the scheme to defraud HOAs in this case. And the parties had also agreed that the allegations regarding Ms. Kleid were not relevant conduct for the sentencing in this case.

And, indeed, we received information indicating that Ms. Kleid has sued Mr. Brown in state court, regarding her business dealings with Mr. Brown in state court.

And so the Government does not believe that there's any reason to continue this criminal case, that this criminal case should be resolved.

THE COURT: Well, it seems to the Court that this is not a case in which there is a victim out there who everybody identifies as a victim. But we don't know what the amount of the loss is that would warrant restitution.

Here I understand the argument is she's not a victim. And the Government says it and defense says it. And, also, a defendant has a right to be -- to have restitution ascertained and set in a reasonable period of time. I mean, there are time limits and so forth about it.

So I continued it because I had hoped that to the extent that there was an argument that this person is a victim and here is the amount and so forth, or that here is the person who's a victim, I thought that that would be presented. But I

01:55:03 understand it's not. Not through counsel's fault but because
1 it's simply arguably not available. At least there's that
2 argument that it's not available. I don't know. No need to
3 assign fault.

4 I think the real question is, in a case in which somebody
5 has not been identified as a victim, that the parties to the
6 criminal disposition, both the United States Attorney and the
7 defense maintain this person is not a victim, will I look
8 beyond that to make some determination that, indeed, this
9 person is a victim and entitled to restitution.

10 And I would say if, in fact, there was evidence that the
11 person is a victim but we just don't know how much, that would
12 be a grounds for, perhaps, some other disposition.

13 But I don't see any basis for making that finding in light
14 of the fact that both the Government and the defense say she is
15 not a victim and that the Court sentenced the defendant based
16 upon an assumption that that conduct didn't constitute relevant
17 conduct.

18 That's right; didn't I? Or did I? What did I do?

19 **MS. CADET:** I don't recall, Your Honor. I remember
20 that both the defense and the Government argued that it was not
21 relevant conduct.

22 **THE COURT:** What did I do?

23 **MR. SCHATZ:** Your Honor --

24 **THE COURT:** Let me find out first. What did I do? I

01:56:31

have no recollection.

2 **MR. RAPPAPORT:** Excuse me.

3 **MR. SCHATZ:** I can explain that, Your Honor.

4 **MR. RAPPAPORT:** Excuse me. You're not a litigant
5 here, sir.

6 What the Court did was, you said, "I have a solution. I
7 am going to sentence Mr. Brown based on the facts before me" --

8 **THE COURT:** Right.

9 **MR. RAPPAPORT:** -- "in the Presentence Report.
10 However, I may include this amount as restitution," and gave
11 Mr. Schatz an opportunity to show the Court --

12 **THE COURT:** Did I sentence him?

13 **MR. RAPPAPORT:** You did.

14 **THE COURT:** Yeah.

15 **MR. RAPPAPORT:** Yes, he's a sentenced defendant.

16 **THE COURT:** Right. So all I have to do is ascertain
17 the restitution. And I'm -- based upon the representations
18 made and the present status and the fact that I think
19 restitution as to this victim, if warranted, would unduly delay
20 the imposition of restitution. And there are other victims,
21 are there not?

22 **MR. RAPPAPORT:** There were.

23 **MS. CADET:** Yes, Your Honor.

24 **THE COURT:** And so they are entitled to restitution
25 where it's clear that they should get it.

01:57:31 So I'm denying your request to delay the proceedings, and
2 I'm denying your request to include her losses, whatever they
3 may be, in the restitution figure.

4 And I will set restitution based upon -- do we have an
5 exact amount in victims and so forth?

6 **MR. RAPPAPORT:** The Court has already ordered it
7 specifically at the time of sentencing.

8 **THE COURT:** That will be the order of restitution.

9 **MR. RAPPAPORT:** Thank you.

10 **THE COURT:** Thank you.

11 **MR. SCHATZ:** Thank you, Your Honor.

12 **THE COURT:** Thank you.

13 **MS. CADET:** Thank you, Your Honor.

14 (At 1:57 p.m. the proceedings were adjourned.)

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16
17 CERTIFICATE OF REPORTER

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.

20 DATE: Saturday, January 30, 2021

21
22 Katherine Sullivan
23

24 Katherine Powell Sullivan, CSR #5812, RMR, CRR
25 U.S. Court Reporter